



The sole issue for determination by the Appeals Board is whether decedent met with personal injury by accident arising out of and in the course of his employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire record, the Appeals Board finds the findings of fact and conclusions of law enumerated in the Award of the Administrative Law Judge to be accurate, appropriate and complete and adopts same as its own findings as if specifically set forth herein. The Appeals Board adopts the analysis of the Administrative Law Judge regarding the relationship of claimant's unusual exertion at work as the precipitating event culminating in his heart attack and death.

K.S.A. 1991 Supp. 44-501(e), commonly known as the "heart amendment" provides:

"Compensation shall not be paid in case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment."

The evidence clearly establishes that claimant's activities at work on the date of his death involving the remodeling of the work area was unusual and involved a degree of exertion that was not typical for the claimant. This exertion continued up until approximately 4:30 p.m. when claimant left work for home. His wife testified that upon his arrival at home about 5:00 p.m. he was not feeling well, complaining of being extremely tired and a feeling of achiness in his arms. He described being more tired than he had ever been before. His actions and physical appearance as described by decedent's wife fit closely the classic symptoms of a heart attack as described by the medical experts, including a decrease in level of activity; breaking out in a cold, clammy sweat; looking pale; chest and/or arm pain; and nausea.

It is significant that although the pathologist gave an opinion relating claimant's heart attack and death to his unusual exertion at work, neither cardiologist testifying in this case shared that opinion. However, the Appeals Board believes that neither Dr. Robert Roeder nor Dr. Karl Pfuetze took into consideration fully the proper sequence of events. The cardiologists relied upon an assumption of more than one (1) hour and, most likely, at least three (3) hours and perhaps as much as six (6) or seven (7) hours elapsing between claimant's last unusual exertion at work and the onset of his heart attack. The Appeals Board finds the evidence supports a much shorter duration between claimant's exertion, specifically the painting and process of cleaning up from the remodeling, including sweeping as well as moving a counter, and the first noticeable symptoms immediately upon his arrival home from work. Consequently, the heavy reliance on the part of the two cardiologists on the existence of a substantial time lapse between the exertion at work and the onset of symptoms at home as the basis for their conclusions renders those opinions less credible than that of Dr. Wike Scamman as to the issue of causation.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge James R. Ward dated May 15, 1995 should be, and hereby is, affirmed in all respects, and the orders contained in the Award are hereby adopted by the Appeals Board as its own.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James R. Derting, Kansas City, MO  
Jerold E. Berger, Topeka, KS  
C. Keith Sayler, Topeka, KS  
James R. Ward, Administrative Law Judge  
Philip S. Harness, Director **ENDFIELD**